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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 ONEBEACON INSURANCE COMPANY,

12 Plaintiff(s),

13 v.

14 HAAS INDUSTRIES, INC.,

15 Defendant(s).

Case No: C-07-3540 BZ (MEJ)

**DECLARATION OF JOHN GIBBS IN
RESPONSE TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR PARTIAL
SUMMARY JUDGMENT**

Date: April 2, 2008
Time: 10:00 a.m.
Courtroom: Courtroom G

18
19 I, JOHN GIBBS, declare and state:

20 1. I am presently self employed as the principle of Gibbs Transportation
21 Consultants, Inc. I know the following of my own personal knowledge and if called upon to do
22 so, could and would competently testify thereto.

23 2. I have recently retired from my position as Director of Claims and Loss
24 Prevention for FedEx Ground. Prior to that I held similar positions for 22 years at Watkins
25 Motor Lines and Southeastern Freight Lines. I am a member of the board of directors and
26 former Chairman of the Transportation Loss Prevention and Security Association. In the course
27 of my career, I have made it a practice to remain apprised of the practices of my competitors.

28 3. The statement in the Declaration of Carmen Holster that "it has been the industry

1 practice for a motor carrier undertaking interstate cargo transportation to limit its liability for loss
2 of or damage to the cargo to .50 a pound, absent a declare value" is quite contrary to my
3 experience. A .50 per pound limitation of liability is common among air freight carriers like
4 FedEx, DHL and Airborne, but for motor carriers limitations vary a great deal.

5 4. Practically all major motor carriers are participants in the National Motor Freight
6 Classification and incorporate the classification by reference into their bills of lading. The
7 classification assigns a class rating number to each commodity running from 35 to 500, based
8 upon its value and shipping characteristics. The higher the class rating, the higher the freight
9 charge. For many commodities, the shipper is permitted to assign a lower class rating in
10 exchange for a limitation of liability. These limitations run the gamut from .10 a pound for used
11 machinery to upwards of \$25.00 per pound for sophisticated equipment. An example is attached
12 as Exhibit 5.

13 5. When class rates are not applied, most carriers rely upon limitations of liability
14 which are contained in their tariffs, which are normally posted on the internet. Again, based
15 upon the value and risk of what is being transported, as well as upon the competition, these
16 limitations vary from very high to very low.

17 6. Simply put, given the wide variety of commodities transported in interstate
18 commerce, there is no industry standard. Canada has adopted a base rate liability system with a
19 standard limitation of \$2.00 a pound. Proposals by the American Trucking Associations and
20 others have called for a standard base rate limitation but have yet to be enacted.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct.

23 Executed on this 19th day of March, 2008, at Orlando, Florida.

24
25 _____/s/
26 JOHN GIBBS
27
28

EXHIBIT 5

NMF 100-Q

ICC NMF 100-Q
FMC-F-28

APSC 30
ATC 28
Cal PUC 32
PUC Colo 27
Conn PUC-MF 28
GPSC 27
IPUC 28
MF-ILL CC 29
IMCA TR-28

Ia DOT 28
KCC 29
KY DOT 28
LPSC 28
MDT Man 28
MF-PSC Md 28
MDPU No. 5
MPSC-NMF 100-Q
MTRB 28

MC 28
Div OT Mo 28
Mont PSC 27
NPSC 28
PSCN 28
NHDOS 28
PUCNJ 28
SCCNM 28
DOT-NY-MT 27

NCUC 27
NDPSC 28
PUBNS 27
PUCO-NMF 100-Q
CC Okla 28
PUC Ore 27
Freight Pa PUC 31
PTCB 28
RIDPU 5

PSCSC 29
SDPUC 27
TPSC 28
RCT 29
PSCU 30
MF-VCC 28
WN T 27
MF-PSC-W Va 30
Wyo PSC 27

(See page 2 for cancellations)

**NATIONAL MOTOR FREIGHT TRAFFIC
ASSOCIATION, INC., AGENT**

CLASSES AND RULES

APPLYING ON
FREIGHT TRAFFIC COVERED BY TARIFFS
GOVERNED BY THIS CLASSIFICATION
AS SUCH TARIFFS MAY PROVIDE

NATIONAL MOTOR FREIGHT CLASSIFICATION

ISSUED APRIL 4, 1990

EFFECTIVE MAY 5, 1990
(Except as otherwise provided herein)

ISSUED BY

MARTIN E. FOLEY, Issuing Officer
2200 Mill Road
Alexandria, VA 22314

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PARTICIPATING INTERSTATE CARRIERS — Continued

@Carrier "Alpha" Code	CARRIER	Certifi- cate or Docket No. MC
VANK	VAN WYK FREIGHT LINES, INC., Grinnell, IA	121661
VKFL	VANDER KOOI FREIGHT LINE, Dennis Smit, d/b/a, Hulla, IA	39904
VNTA	VANTAGE TRANSPORT, INC., Versailles, OH	161795
VASH	VASHON AUTO FREIGHT CO., Vashon, WA	33915
VAUG	VAUGHT TRUCK LINE, INC., Hiawatha, KS	86099
VGAS	VEGAS TRUCKING CO., Las Vegas, NV	113981
VEZA	VENEZIA HAULING, INC., Limerick, PA	155348
VENT	VENTURA TRANSFER COMPANY, Long Beach, CA	7523
VEXP	VENTURE EXPRESS, INC., Nashville, TN	151894
VFLS	VICTORY FREIGHT LINES, INC., Pell City, AL	99653
VIKN	VIKING FREIGHT SYSTEM, INC., San Jose, CA	121835
VIAJ	VINCENT, ALVA JAY, Berlin, NY	99285
VINC	VINCI'S EXPRESS, INC., Woodbine, NJ	32505
VOLP	VOLPE EXPRESS, INC., Norristown, PA	23550
VOLT	VOLUNTEER EXPRESS, INC., Nashville, TN	121699
VFLI	VULCAN FREIGHT LINES, INC., Birmingham, AL	140928
WADS	WADSWORTH AND REILLY EXPRESS, INC., Washington Mills, NY	83151
WAGN	WAGNER FREIGHT LINES, INC., Chattanooga, TN	121158
WAGS	WAGNERS SERVICE, INC., Springfield, OH	60063
WAJR	WAJER, P., & SONS EXPRESS CO., INC., Webster, MA	58946
WALD	WALDRON TRUCK LINE, Frederick M. Jacobs, d/b/a, Fort Smith, AR	98187
WKRO	WALKER TRUCKING CO., Columbus, OH	164958
WALL	WALL TRUCK LINE, INC., Holden, MO	547
WTAP	WALLACE TRANSPORT, Planada, CA	135803
WCAF	WALLACE-COLVILLE MOTOR FREIGHT, INC., Spokane, WA	1924
WLAK	WALLACK FREIGHT LINES, INC., Copiague, Long Island, NY	106222
WMES	WALSH MESSENGER SERVICE, INC., Garden City Park, NY	121454
WATS	WALSH TRUCKING SERVICE, INC., Massena, NY	29643
WARH	WAR-HUNT TRUCKING COMPANY, INC., Allentown, PA	119875
WARD	WARD TRUCKING CORP., Altoona, PA	65916
WNTN	WAREHOUSE & TERMINAL CARTAGE CO., Bridgeview, IL	135395
WNTB	WARNER TRANSPORT COMPANY, Belding, MI	188537
WNDS	WARNER TRUCKING, INC., Belding, MI	97457
WCFL	WARREN COUNTY FREIGHT LINE, INC., McMinnville, TN	121677
WART	WARREN TRANSPORTATION CO., Hayward, CA	121472
WRRM	WARREN TRUCKING CO., INC., Long Beach, CA	119389
WRRS	WARRIOR SERVICES, INC., Secaucus, NJ	166550
WTHC	WASATCH TOTAL CARGO, INC., Salt Lake City, UT	206324
WTRV	WATERVILLE EXPRESS, Thurston E. Browne, d/b/a, Waterville, NY	107472
WKSH	WATKINS AND SHEPARD TRUCKING, INC., Missoula, MT	176957
WWAT	WATKINS MOTOR LINES, INC., Lakeland, FL	95540
WMXP	WATROUS MOTOR EXPRESS, INC., Syracuse, NY	114631
WBFL	WATSON, BILL, FREIGHT LINE, James G. Watson and Marsha B. Watson, d/b/a, Estes Park, CO	99004
WCMS	WEIR-COVE MOVING & STORAGE CO., Weirton, WV	76262
WELT	WELLING TRUCK SERVICE, INC., Reserve, IL	38403
WELS	WELLS CARGO, INC., Reno, NV	43269
WLXP	WELLS EXPRESS, INC., Kearny, NJ	42138
WVAF	WENATCHEE VALLEY AUTO FREIGHT, Wenatchee, WA	42139
WEBE	WEST BEND TRANSIT & SERVICE COMPANY, West Bend, WI	44469
WSED	WEST 8 DELIVERY SERVICE, INC., Denver, CO	115716
WEEP	WEST END EXPRESS, Richard L. Starks, Jr. and Phyllis Starks, d/b/a, Naturita, CO	121257
WESM	WEST MOTOR FREIGHT, INC., Boyertown, PA	21866
WTXE	WEST TEXAS EXPRESS, Joe Washington Roberts, d/b/a, El Paso, TX	150391
WEWT	WEST WORLD TRANSPORTATION CO., INC., Los Angeles, CA	95838
WTOS	WESTERN AUTO SUPPLY COMPANY - Transportation Division, Kansas City, MO	168431
WCTG	WESTERN CARTAGE, INC., Seattle, WA	121508
WCUS	WESTERN COURIER SERVICE, Sandra Sutton, d/b/a, Reno, NV	194907
WSDS	WESTERN DELIVERY SERVICE, INC., Denver, CO	165563
WKXQ	WESTERN KANSAS XPRESS, INC., Wichita, KS	143112
WMEI	WESTERN MARINE EXPRESS, INC., J & J Webster, Inc., d/b/a, City of Industry, CA	193412
WEMF	WESTERN MOTOR FREIGHT, INC., Oklahoma City, OK	121673
WETC	WESTERN TRANSPORTATION COMPANY, Chicago, IL	52752
WTHH	WESTERN TRANSPORTATION SERVICES, Jerry J. Feliciello, d/b/a, West Sacramento, CA	192564
WTPB	WESTERN TRANSPORTATION, INC., Lamar, CO	147217
WMFR	WESTWAY MOTOR FREIGHT, INC., Commerce City, CO	99234
WETZ	WETZ, R. O., TRANSPORTATION, Roy O. Wetz, d/b/a, Marietta, OH	31438
WHEH	WHEEL HORSE TRANSPORT, INC., South Bend, IN	173942
WLRf	WHEELER FREIGHTWAYS, Las Vegas, NV	106679
WHXP	WHITE EXPRESS CO., INC., THE, Brooklyn, NY	3845
WHTR	WHITE'S TRANSPORTATION, Francis D. White, d/b/a, Lockport, NY	61479

RULES**ITEM 360—Concluded**

Sec. 3. Inspection of Property. When carrier's agent believes it is necessary that the contents of packages be inspected, he shall make or cause such inspection to be made, or require other sufficient evidence to determine the actual character of the property. When found to be incorrectly described, freight charges must be collected according to proper description.

Sec. 4. Delivery of Shipments on Order Bills of Lading:

Sec. 4 (a). The surrender to the carrier of the original Order Bill of Lading, properly endorsed is required before the delivery of the property; but, if such bill of lading be lost or delayed, **Sec. 4 (b)** will govern.

Sec. 4 (b). The property may be delivered in advance of the surrender of the bill of lading upon receipt of a certified check, money order or bank cashier's check (or cash at carrier's option) by the carrier's agent for an amount equal to one hundred and twenty-five percent of the invoice or value of the property, or at carrier's option, upon receipt of a bond, acceptable to the carrier, in an amount twice the invoice or value of the property, or a blanket bond may be accepted when satisfactory to the carrier as surety, amount and form. Amounts of money deposited by certified check, money order, bank cashier's check or in cash shall be refunded in full: Immediately upon surrender of bill of lading properly endorsed or when the carrier has received a bond, acceptable to the carrier, in an amount twice the invoice or value of the property.

Sec. 5. Insurance Against Marine Risk: The cost of insurance against marine risk will not be assumed by the carrier unless so provided specifically, in its tariffs.

ITEM 365**STRAIGHT BILL OF LADING—CONTRACT TERMS AND CONDITIONS**

The contract terms and conditions set forth on pages 266 and 267 of the Classification are applicable for all shipments moving on the:

- (1) STRAIGHT BILL OF LADING—SHORT FORM as illustrated on page 271 of the Classification.
- (2) STRAIGHT BILL OF LADING as illustrated on pages 272 and 275 of the Classification.
- (3) SHIPPER-PROVIDED SHORT FORM BILL OF LADING as illustrated on pages 273 and 274 of the Classification.

ITEM 381**CANCELLATION OF ITEMS**

As this classification is supplemented, numbered items with letter suffixes cancel (except as otherwise specifically indicated) correspondingly numbered items in the original classification or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 4000-A cancels item 4000, and item 3600-B cancels item 3600-A in a prior supplement, which, in turn, cancelled item 3600.

ITEM 420**CLASSIFICATION OF ARTICLES—GENERAL**

Sec. 1. Numbers 35 to 500 provided for in this classification under columns headed 'CLASSES', appearing on pages 276 to 666 of this classification, and as amended, are the classes assigned to the articles described in connection therewith and refer to columns of class rates headed by the same respective numbers in the class rate tariffs governed by this classification. Classes 37.5, 77.5 and 92.5 refer also to rates published for classes 37½, 77½ and 92½, respectively, in class rate tariffs governed by this classification.

The progression of classes in this classification is from 35 (lowest) to 500 (highest).

Sec. 2. Classes shown in the class columns opposite the description of articles will apply in conjunction with the rate tariff designated as being governed by this classification.

Sec. 3. When 'O' is shown in the class column, it means that such articles are subject to the rates and regulations of individual carriers.

Sec. 4. A tariff of rates may be made subject to all of the classes published in this classification or may be made subject to either the less than truckload classes or the truckload classes, provided the tariff of rates clearly indicates which classes are to be applied in connection with the rates published therein.

Sec. 5. Where a tariff of rates does not provide a rate for the class shown opposite the description of articles herein and no other provision is made in that tariff as to application of such class, apply the rate for the next higher class for which rates are shown in such tariff.

ITEM 421**CLASSIFICATION BY ANALOGY**

The class for any article not provided for, either by its specific name or embraced in an NOI item, shall be the class provided in the classification for an article which, in the carrier's judgement is the most closely analogous. In such cases, the classification description and the item number utilized will be entered on carrier's freight bill and, further, such facts must be reported by the carrier to the Director of Classification Development, National Classification Committee staff, in order that the establishment of specific provisions may be considered by the Committee. This rule will not apply in connection with classes in exceptions to this classification nor rates in commodity tariffs.

NATIONAL MOTOR FREIGHT CLASSIFICATION 100-Q

Item	ARTICLES	CLASSES		MW.
		LTL	TL	
62820	ELECTRICAL EQUIPMENT GROUP: subject to item 60500 Radio, Radio-telephone or Television Transmitting or Transmitting and Receiving Sets, or other Radio Impulse or Wireless Audio (Sound) Impulse Transmitting or Transmitting and Receiving Sets, separate or combined, in boxes, crates or Package 231, see Note, item 62822:			
Sub 1	Released value not exceeding \$3.00 per pound	100	55	24
Sub 2	Released value exceeding \$3.00 per pound but not exceeding \$6.00 per pound	125	60	24
Sub 3	Released value exceeding \$6.00 per pound but not exceeding \$10.00 per pound	175	85	24
62822	NOTE—The released value must be entered on shipping order and bill of lading in the following form: <i>'The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per pound.'</i> If the shipper fails or declines to execute the above statement or designates a value exceeding \$10.00 per pound, shipment will not be accepted, but if shipment is inadvertently accepted, charges will be assessed initially on the basis of the class for the highest value provided. Upon proof of lower actual value, the freight charges will be adjusted to those that would apply if the shipment had been released to the amount of its actual value. (Classes herein based on released value have been authorized by the Interstate Commerce Commission in Released Rates Order No. MC-597 of December 24, 1964, as amended October 9, 1980, subject to complaint or suspension.) (See page 3 for state authorities.)			
62840	Radio or Telephone Loudspeakers; Telephone Sets; Automobile Radio Receiving Sets; Phonographs; or Disc Type Sound Recordings or Sound Recording Blanks, in mixed TL with articles named in item 63035, loose or in packages, as provided for straight TL shipments		70	18
62860	Recorders or Players, separate or combined, tape or wire, with or without equipment of loudspeakers in same or separate packages, see Note, item 62862, in wooden boxes or Packages 809, 829 or 1018	110	70	15
62862	NOTE—Necessary equipment of loudspeakers shipped in separate packages from recorder or player may be shipped in boxes or Packages 1018 or 1187.			
62880	Rectifiers, mercury arc, or Parts, NOI, not including bulbs or tubes, in boxes or crates	85	45	30
62900	Rectifiers, NOI; or Battery Eliminators (portable radio, phonograph, or tape recorder power supply units); with or without current testers, in boxes, crates or Packages 1237 or 2373	85	45	30
62920	Regulators, induction or voltage:			
Sub 1	Weighing each not less than 1000 pounds, in boxes, crates or on skids	70	45	30
Sub 2	Weighing each less than 1000 pounds or Parts thereof, NOI, in boxes, crates, skids or Packages 1241, 1273 or 2373	77.5	45	30
62960	Rheostats (Resistors), or Parts, NOI, in barrels, boxes, crates or Package 1241	77.5	45	30
63020	Sealers, bag, household type, in boxes	85	50	30
63023	Scissors, electric, hand, in boxes	100	70	20
63025	Semi-conductors, see Note, item 63031, in boxes or Package 2373 viz.: Devices, NOI, see Note, item 63029; Thermistors; Diodes; Transistors; Rectifiers, see Note, item 63027;			
Sub 1	Released value not exceeding \$3.00 per pound	100	70	18
Sub 2	Released value exceeding \$3.00 per pound but not exceeding \$10.00 per pound	200	200	AQ
Sub 3	Released value exceeding \$10.00 per pound but not exceeding \$20.00 per pound	300	300	AQ
Sub 4	If the shipper declines to release each pound in shipment to a value not exceeding \$20.00 per pound, the shipment will not be accepted.			
63027	NOTE—Applies only on named articles in a solid state such as rectifier cells, rectifier stacks or rectifier diodes and does not apply on devices that rectify current mechanically, electro-magnetically, electrolytically or by means of mercury vapor, mercury arc or vacuum tube.			
63029	NOTE—Applies on devices such as, but not limited to, video game cartridges or subassemblies thereof that employ semi-conductor materials in their construction and are not elsewhere specifically named in the classification.			
63031	NOTE—The released value must be entered on the shipping order and bill of lading in the following form: <i>'The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per pound.'</i> If the shipper fails or declines to execute the above statement or designates a value exceeding \$20.00 per pound, shipment will not be accepted, but if shipment is inadvertently accepted, charges initially will be assessed on the basis of the class for the highest value provided. Upon proof of lower actual value, the freight charges will be adjusted to those that would apply if the shipment had been released to the amount of its actual value. (Classes herein based on released value have been authorized by the Interstate Commerce Commission in Released Rates Order No. MC-529 of March 21, 1963, as amended May 15, 1964 and March 31, 1980, subject to complaint or suspension.) (See page 3 for state authorities.)			
63032	Sets, cigar or cigarette lighter, see Note, item 63033, in boxes	100	70	24
63033	NOTE—Applies only on sets consisting of an electric lighter and an electric charging device.			
63034	Sets, television (TV's), projection type, consisting of a TV receiver and separate screen, see Note, item 63041, in boxes	200	125	10